

May 02, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JACLYN RAE SLEATER, and others,

Plaintiffs,

v.

BENTON COUNTY, a municipal

corporation,

Defendant.

No. 4:17-cv-05033-SAB

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court is Benton County's Motion for Summary Judgment, ECF No. 87. The motion was heard without oral argument. Benton County requests summary judgment dismissal of Plaintiff's 42 U.S.C. § 1983 claim, arguing that Plaintiff has failed to identify an official municipal policy that is the moving force behind the alleged constitutional violations. *Monell v. Department of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). Additionally, Benton County argues it is immune from suit because the alleged constitutional violations relate to a judicial act that is covered by judicial immunity. Under the doctrine of absolute quasi-judicial immunity, the Benton County Clerk's office enjoys immunity for issuing allegedly unlawful arrest warrants, and such immunity extends to Benton County. For the reasons set forth below, the Court concludes Benton County is entitled to summary judgment in its favor.

//

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ^ 1**

1 **BACKGROUND**

2 **A. Pay or Appear Legal Financial Obligations Collection Program.**

3 This case arises from the Benton County Clerk's office's collection of legal
4 financial obligations (LFOs) pursuant to the "Pay or Appear" program. Under the
5 program, if an LFO debtor missed a required monthly payment, the debtor was
6 required to schedule a hearing and explain why he or she could not make the
7 payment or appear at the Clerk's office by the 15th of the following month. If the
8 LFO debtor failed to do either of these things, the Clerk's office had "the authority
9 to sign and issue bench warrants." ECF No. 39-1 at 9. This was "the Clerk's office
10 policy." ECF No. 39-1 at 6.

11 According to Josie Delvin, the Benton County Clerk, the Pay or Appear
12 program was developed through a collaboration between the Clerk's office,
13 Benton County Superior Court judges, the Benton County Prosecutor's office, and
14 the Office of Public Defense (OPD). Ms. Devlin explained that the Clerk's office's
15 policy to issue bench warrants without first issuing a summons or other court
16 directive to appear at a hearing was made by the superior court judges, and was
17 principally the decision of retired Benton County Superior Court Judge Swisher.

18 The Clerk's office's authority to issue arrest warrants for failure to pay
19 LFOs was basically unchecked. In the process of issuing bench warrants for LFO
20 non-payment, the warrants were not actually reviewed or signed by any judge.
21 Instead, the warrants were reviewed and signed by Benton County Clerk's Office
22 staff, under the statement "UNDER DIRECTION OF THE HONORABLE
23 _____, Judge of Superior Court on [date]." ECF No. 62 at ¶ 8. The
24 Clerk's office did not first inquire into the LFO debtor's ability to pay before it
25 issued an arrest warrant because, according to Josie Delvin, that was "not [the
26 Clerk's] office's responsibility; that's the judge's." ECF No. 39-1 at 9.

27 //

28 //

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ^ 2**

1 **B. *State v. Sleater* Decision.**

2 In April 2014, Plaintiff Jaclyn Sleater owed LFOs on three prior criminal
3 cases. *State v. Sleater*, 194 Wash. App. 470, 472 (2016). On April 17, 2014,
4 Plaintiff Sleater's mother made an online payment on her behalf. *Id.* And while the
5 payment was accepted, it was not applied to all three cases – it was applied to only
6 one case. *Id.* When Plaintiff Sleater failed to schedule a hearing to explain why she
7 had not made a payment towards the LFOs in her other two cases, the Benton
8 County Clerk's office issued a warrant for her arrest. *Id.*

9 Plaintiff Sleater was arrested on May 16, 2014. *Id.* During her arrest, law
10 enforcement officers found her in possession of methamphetamine. *Id.* at 473.
11 Plaintiff Sleater was charged with, and subsequently convicted of, possession of a
12 controlled substance. *Id.*

13 Plaintiff Sleater appealed, arguing that the Benton County warrants were
14 issued in violation of the Fourth Amendment. *Id.* The Washington Court of
15 Appeals agreed and reversed Plaintiff's conviction. *Id.* at 477. The Court held that
16 before a court issues a warrant for a debtor's failure to pay LFOs, it must first
17 inquire into the debtor's ability to pay. *Id.* at 476.

18 Courts can still issue warrants for the arrest of defendants who do not
19 appear in court to discuss their LFOs. However, *Nasan* tells us that the
20 courts cannot place the onus on the defendant to schedule her own hearing.
21 Instead, we perceive that a summons or prior court order requiring the
22 defendant to attend a specific hearing is necessary before a warrant can
23 issue to arrest someone for not appearing to explain why she is (apparently)
not meeting her payment obligations

24 *Id.* at 476-77.

25 Following the Washington Court of Appeals' decision, the Clerk's office
26 changed its policy for collecting LFOs. Since June 2016, the Clerk's office no
27 longer issues warrants for LFO non-payment. Instead, individuals who fail to pay
28

1 their LFOs are issued a summons to appear at a hearing before the Benton County
2 Superior Court.

3 **C. Class Action.**

4 Plaintiff filed this class action on March 15, 2017. ECF No. 1. Plaintiff
5 seeks monetary damages, injunctive, and/or declaratory relief against Benton
6 County for engaging in a policy and practice of issuing arrest warrants for non-
7 payment of LFOs without first issuing a summons or court directive to appear at a
8 hearing.

9 On November 30, 2018, the Court certified the following class:

10 **Issuance Class:** All persons to whom Benton County issued arrest warrants
11 for failure to pay legal financial obligations without first issuing a summons
12 or other court directive to appear at a hearing, from three years prior to the
13 filing of this action through the date this matter is resolved.

14 Additionally, the Court certified the following subclass:

15 **Incarceration Subclass:** All persons arrested and incarcerated from three
16 years prior to the filing of this action through the date this matter is
17 resolved, pursuant to arrest warrants issued by Benton County for failure to
18 pay legal financial obligations that were issued without first issuing a
summons or other court directive to appear at a hearing.

19 ECF No. 75.

20 **STANDARD**

21 Summary judgment is appropriate if the evidence, when viewed in the light
22 most favorable to the non-moving party, shows that there is no genuine issue as to
23 any material fact. Fed. R. Civ. P. 56(a). The moving party has the initial burden of
24 establishing the absence of a genuine dispute of material fact. *Celotex Corp. v.*
25 *Catrett*, 477 U.S. 317, 322 (1986). If the moving party satisfies this burden, the
26 non-moving party “must go beyond pleading and identify facts which show a
27
28

1 genuine issue for trial.” *Cline v. Indus. Maint. Eng’g & Contracting Co.*, 200 F.3d
2 1223, 1229 (9th Cir. 2000) (citing *Celotex Corp.*, 477 U.S. at 323-24).

3 **DISCUSSION**

4 Benton County argues Plaintiff’s § 1983 claim should be dismissed for two
5 reasons. First, Benton County argues Plaintiff has failed to identify an official
6 municipal policy that is the moving force behind the alleged constitutional
7 violations. *Monell*, 436 U.S. at 694 (1978). More specifically, Benton County
8 argues the policy identified by Plaintiff cannot be attributed to it because the
9 policy was not created by a municipal official with “final policymaking authority.”
10 *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988). The policy at issue was
11 created by state judicial officers pursuant to their statutory authority over LFO
12 debtors.

13 Second, Benton County argues it is immune from suit because the policy at
14 issue relates to a judicial act that enjoys judicial immunity. By issuing arrest
15 warrants under the Pay or Appear program, the Clerk’s office was performing a
16 function that was part of the judicial process for which the doctrine of absolute
17 quasi-judicial immunity applies. And because the Clerk’s office enjoys immunity
18 for this conduct, such immunity extends to Benton County.

19 **1. Municipal Liability Under 42 U.S.C. § 1983.**

20 42 U.S.C. § 1983 provides a cause of action against any “person” who,
21 under color of law, deprives an individual of federal constitutional or statutory
22 rights. 42 U.S.C. § 1983. The United States Supreme Court has held that
23 municipalities are “persons” within the meaning of § 1983. *Monell*, 436 U.S. at
24 690. A municipality may be sued under § 1983 only for those acts which “the
25 municipality itself is actually responsible, ‘that is, the acts which the municipality
26 has officially sanctioned or ordered.’ ” *Praprotnik*, 485 U.S. at 123 (quoting
27 *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986)).

1 Stated differently, a municipality “may not be held liable under 42 U.S.C §
2 1983, unless a policy, practice, or custom of the entity can be shown to be a
3 moving force behind a violation of constitutional rights.” *Dougherty v. City of*
4 *Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell*, 436 U.S. at 694). The
5 purpose of the “official municipal policy” requirement is to prevent municipalities
6 from being held vicariously liable for unconstitutional acts of their employees
7 under the doctrine of respondeat superior. *Monell*, 436 U.S. at 691; *Pembaur*, 475
8 U.S. at 478-79.

9 **A. The Policy at Issue Was Not Created by a Municipal Official with**
10 **Final Policymaking Authority.**

11 Plaintiff brings her § 1983 claim against Benton County for the Clerk’s
12 office’s policy and practice of issuing arrest warrants for non-payment of LFOs
13 without first issuing a summons or court directive to appear at a hearing. Plaintiff
14 asserts this policy is attributable to Benton County because it was adopted by the
15 Benton County Clerk who acts as an official policymaker for Benton County.

16 A municipality may be liable under § 1983 for the acts and omissions of
17 municipal officials with “final policymaking authority.” *Praprotnik*, 485 U.S. at
18 123. Whether a particular official has “final policymaking authority” is a question
19 of state law. *Id.* (citing *Pembaur*, 475 U.S. at 483). Additionally, “the challenged
20 action must have been taken pursuant to a policy adopted by the official or
21 officials responsible under state law for making policy in that area of the city’s
22 business.” *Praprotnik*, 485 U.S. at 123. “Authority to make municipal policy may
23 be granted by a legislative enactment or may be delegated by an official who
24 possesses such authority, and of course, whether an official had final
25 policymaking authority is a question of state law.” *Pembaur*, 475 U.S. 483.

26 In this case, the policy at issue relates to the issuance of arrest warrants for
27 the failure to pay LFOs, without first issuing a summons or court directive to
28 appear at a hearing. In Washington, state law grants superior court judges the

1 power to impose LFOs upon an individual as part of his or her sentence. Wash.
2 Rev. Code § 9.94A.760(1). “For any offense committed on or after July 1, 2000,
3 the court shall retain jurisdiction over the offender, for purposes of the offender’s
4 compliance with payment of the legal financial obligations, until such obligations
5 is completely satisfied, regardless of the statutory maximum for the crime.” Wash.
6 Rev. Code § 9.94A.760(5). If an LFO debtor fails to pay his or her LFOs, “the
7 court, upon the motion of the state, or upon its own motion, shall require the
8 offender to show cause why the offender should not be punished for the
9 noncompliance. The court may issue a summons or a warrant of arrest for the
10 offender’s appearance.” Wash. Rev. Code § 9.94B.040(4)(b). Washington law
11 authorizes the county clerk to “collect unpaid legal financial obligations at any
12 time the offender remains under the jurisdiction of the court for purposes of his or
13 her legal financial obligations.” Wash. Rev. Code § 9.94A.760(5).

14 Josie Delvin testified that the Pay or Appear program was developed
15 through a collaboration between the Clerk’s office, Benton County Superior Court
16 judges, the Benton County Prosecutor’s office, and OPD. She further explained
17 that the Clerk’s office’s policy to issue bench warrants without first issuing a
18 summons or other court directive to appear at a hearing was made by the superior
19 court judges, and was principally the decision of Judge Swisher.

20 Washington law makes clear that the Benton County Clerk’s office does not
21 have final official policymaking authority over whether an arrest warrant is to be
22 issued for an individual’s failure to pay LFOs, or the manner in which such arrest
23 warrants are to be issued. This authority rests with superior court judges. Wash.
24 Rev. Code § 9.94B.040(4)(b); § 9.94A.760(5). The record shows Benton County
25 Superior Court judges created the policy in question and directed the Clerk’s
26 office to effectuate the policy in a specific manner.

27 Benton County argues Plaintiff’s § 1983 claim should be dismissed because
28 the policy at issue was not created by a municipal official with “final

**ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT ^ 7**

1 policymaking authority.” *Praprotnik*, 485 U.S. at 123. Instead, it was created by
2 state judicial actors pursuant to their statutory authority over LFO debtors.

3 In support of its position, Benton County cites *Eggar v. City of Livingston*,
4 40 F.3d 312 (9th Cir. 1994). In *Eggar*, a judge in the City of Livingston, Montana,
5 would advise criminal defendants of their rights in groups, never explaining under
6 what circumstances they had a right to counsel, and never explaining the meaning
7 of the waiver form they were asked to sign. 40 F.3d at 313-14. The plaintiffs filed
8 a § 1983 claim against the city and the judge, alleging the city had a policy of
9 imprisoning indigent defendants without offering appointed counsel and without
10 securing an effective waiver of the right to counsel. 40 F.3d at 313-14. The
11 plaintiffs argued the city was liable under *Monell* because the judge acted as a
12 policy maker for the city. *Id.*

13 The Ninth Circuit Court of Appeals affirmed the district court’s decision to
14 grant summary judgment in favor of the defendants. The critical question was
15 whether, under state law, the judge’s actions were performed under the authority
16 of the municipality or the state. *Id.* at 314. The Ninth Circuit found the acts in
17 question were performed by the judge in his capacity as a judicial officer, pursuant
18 to the discretion afforded to him by the state. *Id.* “Judge Travis’ acts and decisions
19 advising indigents of their rights are not administrative or ministerial acts based on
20 the judge’s authority as a local official. However, the judge’s treatment of indigent
21 defendants was an exercise of judicial discretion drawn from the authority of the
22 state, appealable to higher state courts, and closely analogous to actions found to
23 be outside the scope of municipal liability.” *Id.*

24 In reaching its decision, the Ninth Circuit focused on state law governing
25 the acts in question. “As state law makes clear, the Judge’s obligation to address
26 the rights of defendants arises from his membership in the state judiciary. It is
27 lamentable, but irrelevant, that he failed miserably to meet this obligation under
28

1 both state and federal standards: he simply is not a municipal decision maker in
2 this context.” *Id.* at 315.

3 In this case, Washington law clearly authorizes superior court judges to
4 impose LFOs and issue arrest warrants for a debtor’s failure to pay LFOs. Wash.
5 Rev. Code § 9.94A.760(5); § 9.94B.040(4)(b). The Washington Constitution vests
6 superior court judges with the judicial power of the state. Wash. Const. Art. IV,
7 Sec. 1. It is true that Washington law grants the county clerk’s office with the
8 responsibility for collecting LFOs on behalf of the superior court. Wash. Rev.
9 Code § 9.94A.760(5). However, Plaintiff cites to no authority that would allow the
10 Clerk’s office to issue arrest warrants for LFO non-payment, on its own notion.
11 Such authority is vested in superior court judges.

12 The Court acknowledges that the facts in this case are distinguishable from
13 those in *Eggar*. In this case, while the policy at issue was created by Benton
14 County Superior Court judges, it was effectuated by the Clerk’s office. The Court
15 finds this distinction is inconsequential because the source of the policy remains
16 the same.

17 To illustrate the point, Benton County cites *Woods v. City of Michigan City*,
18 *Ind.*, 940 F.2d 275 (7th Cir. 1991). In *Woods*, a superior court judge issued a bond
19 schedule to law enforcements officers within LaPorte County, Indiana, requiring
20 bond for those arrested for reckless driving. 940 F.2d at 278. The judge’s directive
21 conflicted with Indiana state law requiring the release of any person arrested for a
22 traffic misdemeanor offense, upon a signed promise to appear in court at a later
23 date. *Id.* at 277.

24 The plaintiff filed suit against Michigan City, LaPorte County, and several
25 police officers alleging the police deprived him of liberty pursuant to a judge’s
26 directive that clearly conflicted with state law. *Id.* at 276-77. The plaintiff argued
27 that the judge, as a judicial officer, acted a senior policymaking official sufficient
28 to subject the city and county to liability under *Monell*. *Id.* at 277.

**ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT ^ 9**

1 As was the case in *Eggar*, the critical issue in *Woods* was whether the judge,
2 in issuing the directive in question, was acting as a policymaker with final
3 policymaking authority under state law. *Id.* at 279. The Seventh Circuit Court of
4 Appeals determined the judge was not acting as an official policymaker, for
5 purposes of establishing liability under *Monell. Id.*

6 Judge Arthur Keppen, author of the offending bond directive, is a judge of
7 the LaPorte Superior Court. Under Indiana law, a judge of a court of
8 criminal jurisdiction is the official with final authority for fixing bail.
9 Indiana law reveals that judges of Indiana's circuit, superior and county
10 courts are judicial officers of the State judicial system: "they are not county
11 officials." County courts in Indiana are exclusively units of the judicial
branch of the state's constitutional system ...

12 Reckless driving is a violation of state law. State courts, such as LaPorte
13 Superior Court, have jurisdiction over such violations. Since Superior Court
14 judges in Indiana are considered to be officials of the state, Woods' claim
15 that Judge Keppen is an official of the city or county, or that his bond
16 schedule is an "act that" Michigan City or LaPorte County have "officially
17 sanctioned or ordered" is unfounded. *Pembaur* requires that "municipal
18 liability under § 1983 attaches where, and only where, a deliberate choice to
19 follow a course of action is made ... by the official ... responsible for
20 establishing final policy ..." No municipal liability attaches in this case
21 because the judge under Indiana law is not such an official vis a vis the city
22 and county. The city and county cannot be held liable under § 1983 unless
Woods proved the existence of an unconstitutional municipal policy
initiated by a final policymaker for the municipalities. Woods, by naming
Judge Keppen as the source of the constitutional deprivation, detaches the
local government from the unconstitutional policy.

23 *Woods*, 940 F.2d at 279 (internal citations omitted).

24 In this case, the critical question is whether the Benton County Superior
25 Court judges, in creating the policy in question and directing the Clerk's office to
26 issue arrest warrants for LFO non-payment, were acting as official policymakers
27 for Benton County. The Court finds they were not. The Benton County Superior
28

1 Court judges who issued this policy were acting as judicial officers of the state
2 pursuant to their statutory authority over LFO debtors.

3 Plaintiff highlights the fact that the policy was created through a
4 collaboration between the Clerk's office, Benton County Superior Court judges,
5 the Benton County Prosecutor's office, and OPD. But this does nothing to change
6 the fact that the policy was not created by a municipal official with "final
7 policymaking authority." *Praprotnik*, 485 U.S. at 123. Washington law makes
8 clear that such a policy could be created only by a superior court judge. Whether
9 others assisted in its creation is inconsequential.

10 Plaintiff also argue that the Benton County Clerk had the full authority to
11 issue, or not issue, a summons or other notice prior to issuing arrest warrants for
12 failure to pay LFOs, but made the policy decision not to do so. Plaintiff's
13 argument fails for at least two reasons. First, Josie Delvin clarified that the Clerk's
14 office's policy to issue bench warrants without first issuing a summons or other
15 court directive to appear at a hearing was made by the superior court judges, and
16 was principally the decision of Judge Swisher. Thus, it cannot be said that the
17 Clerk's office created this policy, it was simply effectuating Judge Swisher's
18 directive.

19 Second, Plaintiff fails to establish that the Benton County Clerk is a
20 municipal official with final policymaking authority over when arrest warrants are
21 issued for LFO non-payment, and the manner by which such arrest warrants are to
22 be issued. Such authority rests with superior court judges. *See* Wash. Rev. Code §
23 9.94B.040(4)(b) (if a debtor fails to pay his or her LFOs, "the court, upon the
24 motion of the state or upon its own motion, shall require the offender to show
25 cause why the offender should not be punished for the noncompliance. The court
26 may issue a summons or a warrant of arrest for the offender's appearance.").

27 Finally, Plaintiff argues the actions of the superior court judges can be
28 attributable to Benton County because they were acting as policymakers for the

1 Benton County, and not judicial officers of the state. A similar argument was made
2 by the plaintiffs in *Eggar*. The Ninth Circuit acknowledged that a city may liable
3 for a judge’s actions under certain circumstances. *See Eggar*, 40 F.3d at 315. For
4 example, in *Williams v. Butler*, 863 F.2d 1398 (8th Cir. 1998), the Eighth Circuit
5 Court of Appeals held that a city may be subject to liability under § 1983 for a
6 municipal judge’s actions for unconstitutionally firing two clerks, when it was
7 clear that the city had delegated to him final administrative authority over
8 employment matters. *Id.* at 1402-03.

9 This argument fails for the same reason it did in *Eggar*. This case is about a
10 policy related to the way arrest warrants were issued for failure to pay LFOs.
11 Washington law makes clear superior court judges have the authority to impose
12 LFOs upon criminal defendants, and to issue a summons or arrest warrant for an
13 individual’s failure to pay LFOs. Wash. Rev. Code § 9.94A.760(5); §
14 9.94B.040(4)(b). This authority is granted to superior court judges by the State of
15 Washington, not Benton County. The Benton County Superior Court judges are
16 simply not municipal decisionmakers in this context.

17 The policy at issue was created by state judicial officers pursuant to their
18 authority under state law. As such, the policy cannot be attributed to Benton
19 County. To find otherwise would allow Benton County to be liable for the Clerk’s
20 office’s actions under a theory of respondeat superior. *Pembaur*, 475 U.S. at 478-
21 79 (explaining that the purpose of the “official municipal policy” requirement is to
22 prevent municipalities from being held vicariously liable for unconstitutional acts
23 of their employees under the doctrine of respondeat superior).

24 In sum, Plaintiff has failed to identify an “official municipal policy” that can
25 support her § 1983 claims under *Monell*. Therefore, Plaintiff’s § 1983 claim is
26 dismissed.

27 **2. Benton County Enjoys Immunity.**

1 Benton County also argues Plaintiff's § 1983 claim should be dismissed
2 because the Clerk's office enjoys absolute quasi-judicial immunity over the
3 challenged conduct.

4 Judges are absolutely immune from liability for damages in civil rights suits
5 for judicial acts performed within their subject matter jurisdiction. *Stump v.*
6 *Sparkman*, 435 U.S. 349, 356 (1978); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th
7 Cir. 1986). Acts are judicial where the acts are normally performed by a judge, and
8 where the parties deal with the judge in his or her judicial capacity. *Sparkman*, 435
9 U.S. at 362; *Crooks v. Maynard*, 913 F.2d 699, 700 (9th Cir. 1990). "Court clerks
10 have absolute quasi-judicial immunity from damages for civil rights violations
11 when they perform tasks that are an integral part of the judicial process." *Mullis v.*
12 *United States Bankruptcy Court*, 828 F.2d 1385, 1390 (9th Cir. 1987); *Sharma v.*
13 *Stevas*, 790 F.2d 1486, 1486 (9th Cir. 1986) (holding the United States Supreme
14 Court Clerk enjoys absolute quasi-judicial immunity because his challenged
15 activities "were an integral part of the judicial process.").

16 Benton County argues the Clerk's office enjoys absolute quasi-judicial
17 immunity because it was performing a task that is integral to the judicial process.
18 There is no question that the issuance of an arrest warrant is a judicial act for
19 purposes of judicial immunity. *Ireland v. Tunis*, 113 F.3d 1435, 1441 (1997).
20 While Benton County concedes the warrants were not individually reviewed
21 and/or approved by superior court judges before they were issued, the warrants
22 were nonetheless issued at the direction of a superior court judge with a seal of the
23 superior court affixed on the warrant.

24 Plaintiff disagrees and characterizes the Pay or Appear program as an
25 administrative policy created by superior court judges on whether and when
26 judicial orders would be issued. When viewed in this light, Plaintiff argues the Pay
27 or Appear program does not involve a judicial act and, therefore, is not covered by
28 judicial immunity. *See Forrester v. White*, 484 U.S. 219, 227-29 (1988)

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ^ 13**

1 (explaining that absolute judicial immunity extends to those act which are truly
2 judicial acts and not simply administrative acts).

3 In support of this position, Plaintiff cites *Morrison v. Lipscomb*, 877 F.2d
4 463, 464-66 (6th Cir. 1989). In *Morrison*, the chief judge of a district court in
5 Michigan declared a moratorium on the issuance of writs of restitution¹ between
6 December 15, 1986 and January 2, 1987, in observance of the holiday season. 877
7 F.2d at 464. The plaintiff was a landlord who had the authority to petition the
8 court for a writ of restitution, in order to evict the tenants occupying his property.
9 *Id.* The clerk of court refused to process the plaintiff's petition, citing the
10 moratorium. *Id.* The plaintiff sued. *Id.*

11 The issue before the Sixth Circuit Court of Appeals was whether the judge
12 was entitled to judicial immunity for his conduct in issuing the moratorium. *Id.* at
13 465. The Court acknowledges that Michigan law granted the judge the authority to
14 issue the moratorium. *Id.* at 466. However, "simply because rule making and
15 administrative authority has been delegated to the judiciary does not mean the acts
16 pursuant to that authority are judicial." *Id.*

17 Instead, the Court found the judge's conduct in *Morrison* was administrative
18 and, therefore, not covered by judicial immunity. *Id.* at 466. In reaching its
19 decision, the Sixth Circuit focused on whether the judge's conduct involved an
20 adjudication between parties.

21 Any time an action taken by a judge is not an adjudication between parties,
22 it is less likely that the act is a judicial one. [The judge's] moratorium was a
23 general order, not connected to any particular litigation. The order did not
24 alter the rights and liabilities of any parties but, rather, instructed court
25 personnel on how to process the petitions made to the court. This case
26 differs from an adjudication in that a litigant offended by a judicial act can,
in the vast majority of cases, appeal the court's decision to a higher court;

27 ¹ A writ of restitution is a document that authorizes a court officer or local sheriff
28 to schedule a tenant's eviction.

1 here, no direct appeal is available, making the absence of judicial liability
2 far less reasonable.

3 *Id.*

4 //

5 Plaintiff argues that the Pay or Appear program in this case, like the
6 moratorium in *Morrison*, is a general order that is not connected to any particular
7 litigation. The Pay or Appear program, Plaintiff argues, is nothing more than an
8 instruction to court personnel on how to process certain cases.

9 There is a critical difference, however, between the moratorium in *Morrison*
10 and the Pay or Appear program in this case: an arrest warrant for LFO non-
11 payment is an act that alters the rights and responsibilities of the affected parties,
12 and is an act that can be challenged in court. The moratorium in *Morrison*
13 involved a directive that sought to maintain the status quo during the holiday
14 season by not processing a petition that would have resulted in an order of
15 eviction. It was a directive of inaction, where the inaction did not impact the rights
16 and liabilities of any parties. *Morrison*, 877 F.2d at 466.

17 The Pay or Appear program, on the other hand, is a directive of action,
18 requiring the Clerk's office to issue an arrest warrant under certain circumstances.
19 This action impacts the rights and liabilities of the parties involved. We know that
20 to be true because Plaintiff Sleater was arrested and incarcerated pursuant to one
21 of these arrest warrants. She also had the opportunity to challenge the arrest
22 warrant at the trial court and Washington Court of Appeals. For that reason, the
23 directive in this case involves a judicial act.

24 In sum, the Pay or Appear program involved the judicial act of issuing arrest
25 warrants. The authority to issue such an arrest warrant is granted to superior court
26 judges by Washington law. Wash. Rev. Code § 9.94B.040(4)(b). The policy
27 requiring the Clerk's office to issue these arrest warrants was created by Benton
28 County Superior Court judges. By issuing these arrest warrants, the Clerk's office

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ^ 15**

1 was simply performing a task that is “an integral part of the judicial process.”
2 *Mullis*, 828 F.2d at 1390. For that reason, the Clerk’s office enjoys absolute quasi-
3 judicial immunity for issuing arrest warrants under the Pay or Appear program.

4 Because the Clerk’s office is immune from suit, so is Benton County. *See*
5 *Coyle v. Baker*, No. CV-12-0601-LRS, 2013 WL 3817427, at *1 (E.D. Wash. July
6 22, 2013) (“The public policies which require immunity for prosecuting attorney
7 and judges, also requires immunity for both the state and the county for acts of
8 judicial and quasi-judicial officers in the performance of the duties of their
9 respective officers[.]”); *Kay v. Thurston County*, No. 08-5041-RBL, 2008 WL
10 5000192, at *3 (W.D. Wash Nov. 20, 2008) (“quasi-judicial immunity extends to
11 the County and State.”).

12 CONCLUSION

13 For the reasons set forth above, the Court finds Benton County is entitled to
14 summary judgment in its favor.

15 IT IS HEREBY ORDERED:

16 1. Defendant’s Motion for Summary Judgment, ECF No. 87, is **GRANTED**.

17 2. Plaintiff’s 42 U.S.C. § 1983 claims against Benton County are
18 **DISMISSED with prejudice**.

19 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
20 this Order and provide copies to counsel, and close the file.

21 **DATED** this 2nd day of May 2019.



25
26

A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

27 Stanley A. Bastian
28 United States District Judge